

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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In re SEVEN RESORTS, INC. a Nevada
corporation, d/b/a SEVEN CROWN
RESORTS, as owner of a certain 1986
houseboat manufactured by Master
Fabricators; Summit Model Echo Bay
rental No. 224, for exoneration from or
limitation of liability,

2:10-CV-01149-PMP-LRL

O R D E R

Plaintiff.

Presently before the Court is Claimants' Motion to Dismiss Plaintiff's Amended Complaint for Exoneration from or Limitation of Liability (Doc. #20), filed on November 17, 2010. Plaintiff filed a Response (Doc. #22) on December 6, 2010. Claimants filed a Reply (Doc. #23) on December 16, 2010.

I. BACKGROUND

Plaintiff Seven Resorts, Inc., d/b/a Seven Crown Resorts ("Seven Crown") is the owner of a 1986 houseboat manufactured by Master Fabricators. Claimants are Mary Jolynn Murphy and Michael Browning, individually and as the natural parents of Joshua Murphy, and Mary Jolynn Murphy as the Special Administrator of the Estate of Joshua Murphy (collectively "Claimants").

On August 17, 2009, Michael Browning rented a houseboat from Plaintiff at Lake Mead in Clark County, Nevada. (Resp. To Mot. to Dismiss (Doc. #22), Ex. A.) On the evening of August 20, 2009, Claimants tied the houseboat to the shore of an unnamed cove in Lake Mead. (Id., Ex. J.) Claimants' son, Joshua Murphy ("Joshua"), was playing

1 on a raft that was tied to the back of the houseboat near where the generator exhaust
2 ventilated while Michael Browning was elsewhere on the houseboat preparing dinner. (Id.)
3 When dinner was nearing completion, Michael Browning called for Joshua but did not
4 receive an answer. (Id.) Michael Browning and his wife's son, James Pettie, then went
5 looking for Joshua and noticed him floating face down in the water off of the raft. (Id.)
6 They pulled Joshua from the water, called 911, and unsuccessfully attempted to revive
7 Joshua. (Id.) An autopsy conducted by the Clark County Coroner's office determined the
8 cause of death to be carbon monoxide poisoning, most likely from the generator exhaust,
9 with drowning as a secondary cause of death. (Mot. to Dismiss (Doc. #20), Exs. 2 + 3.)

10 On August 27, 2009, counsel for Claimants, Sam Harding ("Harding"), sent two
11 letters to Seven Crown's insurance adjustor, Kenneth Harris ("Harris"), via email. (Id., Ex.
12 1.) The letters advised Harris that Harding was retained to represent the family of Joshua
13 Murphy regarding his death. (Id.) The letters also stated that Mr. Browning rented the
14 houseboat from Seven Crown and that Joshua died of carbon monoxide poisoning most
15 likely from the houseboat's generator. (Id.) The first letter concluded by asking Harris to
16 advise Harding of the liability policy limits of Seven Crown's insurance policy. (Id.)

17 On July 13, 2010, Plaintiff filed a Complaint for Exoneration from or Limitation
18 of Liability pursuant to the Shipowner's Liability Act of 1851, 46 U.S.C. §§ 30501-12
19 (formerly §§ 181-89). (Compl. (Doc. #1).) Plaintiff is attempting to limit its liability to the
20 value of the vessel involved in the incident and its cargo. Claimants now move to dismiss
21 Seven Crown's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and
22 12(b)(6), claiming this Court does not possess admiralty jurisdiction, and if it does, Seven
23 Crown did not file its Complaint within the six month notice period required by 46 U.S.C.
24 § 30511. Plaintiff responds that this Court has admiralty and maritime jurisdiction over the
25 Complaint pursuant to 28 U.S.C. § 1333 and that it timely filed its Complaint.

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II. DISCUSSION

Federal courts are court of limited jurisdiction and are “presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” Stock West, Inc. v. Confederated Tribes of the Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989). Pursuant to Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss an action for lack of subject matter jurisdiction. It is the burden of the party asserting federal jurisdiction to prove that the case is properly in federal court. McCauley v. Ford Motor Co., 264 F.3d 952, 957 (9th Cir. 2001).

A. Admiralty Jurisdiction

In Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., the Supreme Court fashioned a two pronged “location and connection” test to determine whether admiralty jurisdiction exists in tort cases involving pleasure crafts such as houseboats. 513 U.S. 527, 534 (1995). The “location” portion of the test is satisfied if the tort occurred on navigable water. Id. The “connection” prong has two subparts. H2O Houseboat Vacations Inc. v. Hernandez, 103 F.3d 914, 916 (9th Cir. 1996). First, the court must assess whether the incident “has a potentially disruptive impact on maritime commerce.” Grubart, 531 U.S. at 534 (quotation omitted). Then, the “court must determine whether the general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity.” Id. (quotation omitted).

In H2O Houseboat, the United States Court of Appeals for the Ninth Circuit was faced with a claim for limitation of liability in connection with a family who was injured by carbon monoxide poisoning from the houseboat they rented. 103 F.3d 914. The incident took place on Lake Havasu, Arizona, a navigable water and therefore satisfied the “location” prong of the “location and connection” test. Id. at 916. The Ninth Circuit then considered whether the incident satisfied the “connection” prong and held that emission of carbon monoxide from a houseboat did not have the potential to disrupt maritime

1 commerce. Id. at 916. The Ninth Circuit noted that speculation about the potential
2 disruption of maritime commerce that could have occurred had the houseboat not been tied
3 to shore and its occupants poisoned while loose on the water ignored the facts of the actual
4 incident. Id. at 916-17. Because the potential to disrupt maritime commerce was not
5 present, the Court did not need to consider whether the incident had a substantial
6 relationship to traditional maritime activity, and hence affirmed the district court's dismissal
7 for lack of admiralty subject matter jurisdiction. Id. at 917.

8 Here, the incident giving rise to this action was death by carbon monoxide
9 poisoning at Lake Mead in Clark County, Nevada. The "location" portion of the "location
10 and connection" test is satisfied because the incident happened on Lake Mead, a navigable
11 waterway. However, the Ninth Circuit previously determined that carbon monoxide
12 poisoning on a houseboat tied to shore does not have the potential to disrupt maritime
13 commerce. Therefore, the "connection" prong of the "location and connection" test is not
14 satisfied. Thus, Plaintiff has not shown that this Court has admiralty jurisdiction over the
15 present matter.

16 **B. Shipowner's Liability Act of 1851**

17 The Shipowner's Liability Act of 1851 ("Liability Act") allows for the owner of a
18 vessel to limit his or her liability to the value of the vessel and its freight. 46 U.S.C.
19 § 30505(1)(a). The Shipowner's Liability Act of 1851 does not confer independent federal
20 jurisdiction on its claimants; rather those seeking its protection must independently satisfy
21 the test for admiralty or other federal jurisdiction. Seven Resorts, Inc. v. Cantlen, 57 F.3d
22 771, 773 (9th Cir. 1995). Under the Liability Act, an owner seeking to limit liability must
23 bring the limitation action within six months after the claimant gives written notice of a
24 claim. 46 U.S.C. § 30511(a).

25 Here, admiralty jurisdiction is lacking. The Liability Act by itself does not give
26 rise to grounds for federal jurisdiction. Plaintiff has not shown that this Court otherwise has

1 federal jurisdiction. Therefore, the Court dismisses Plaintiff's Complaint for lack of subject
2 matter jurisdiction, and the Court need not consider whether Plaintiff filed the limitation
3 action within six months of receiving written notice of Claimants' claim.

4 **III. CONCLUSION**

5 IT IS THEREFORE ORDERED that Claimants' Motion to Dismiss Plaintiff's
6 Amended Complaint for Exoneration from or Limitation of Liability (Doc. #20) is hereby
7 GRANTED.

8 IT IS FURTHER ORDERED that Plaintiff's Complaint (Doc. #1) is hereby
9 DISMISSED for lack of subject matter jurisdiction.

10 DATED: March 7, 2011.

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12 PHILIP M. PRO
13 United States District Judge
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